

1979 S.C. Op. Atty. Gen. 33 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-23, 1979 WL 29029

Office of the Attorney General

State of South Carolina

Opinion No. 79-23

February 8, 1979

**\*1 The sale and use of instant powdered cocktails with alcohol-containing powder are precluded by the Constitution and laws of South Carolina.**

Alcoholic Beverage Control Commission

QUESTIONS:

Is there authority to market instant powdered cocktails with alcohol-containing powders and dry flavoring in this State? How would such powders be taxed?

DISCUSSION:

Section 2 of Article XXI of the United States Constitution provides states with authority to regulate and control the sale and use of intoxicating liquors. Specifically, the section provides:

“The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”

Since the adoption of this provision, the courts have recognized that a state has a right to legislate concerning intoxicants brought from without the state for use or sale therein, unfettered by the Commerce Clause. [Ziffrin v. Reeves](#), 308 U.S. 132, 60 S.Ct. 163, 84 L.Ed. 128; [Heublein, Inc. v. South Carolina Tax Commission](#), 409 U.S. 275, 93 S.Ct. 483, 34 L.Ed.2d 472.

The South Carolina Constitution, Article VIII–A, provides the General Assembly of South Carolina with authority to regulate and control the sale of alcoholic liquors and beverages in this State. Legislation has been enacted concerning alcoholic liquors which is in Titles 61 and 12 of the South Carolina Code of Laws 1976.

Alcoholic liquors are defined in § 61–3–20(1) as “any spirituous malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors or any compound or mixture thereof by whatever name called or known which contains alcohol and is used as a beverage”. Excluded are wines made for home consumption and beverages defined to be nonalcoholic or nonintoxicating. Beers, ales, porter and other similar beverages with alcohol content of less than five (5%) percent by weight and wines not containing more than twenty-one (21%) percent of alcohol by volume are nonalcoholic. Section 61–9–10.

Chapter 33 of Title 12 provides license taxes and taxes on sales of alcoholic liquors. Specifically, in Sections 12–33–230 and 12–33–240, the tax is on the amount of sales measured in ounces. The tax in § 12–33–410 and § 12–33–420 on alcoholic liquors is measured in gallons. Both measures are based on liquid measure. There are no dry measure provisions.

Since the State has the authority to prohibit alcoholic liquors, it may also permit the sale and use on its terms and conditions. By specifically providing for the sale and use of liquid alcoholic beverages and the taxation of liquid alcohol, and by not providing for sale and use of dry alcohol or the taxation of dry alcohol, it is implied that there is no authority to sale or use dry alcohol in this State. [Jones v. H.D. and J.K. Crosswell](#), 60 F.2d 827; [Gattis v. Chavez](#), 413 F.Supp. 33.

CONCLUSION:

\*2 The sale and use of instant powdered cocktails with alcohol-containing powder are precluded by the Constitution and laws of South Carolina.

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